

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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MODERN FENCE TECHNOLOGIES, INC.,

Plaintiff,

v.

Case No. 08-C-0543

QUALIPAC HOME IMPROVEMENT CORP.,

Defendant.

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**ORDER FOR JUDGMENT**

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The jury trial in this action having been conducted from April 18, 2011 through April 27, 2011, and the jury having returned its verdict on April 27, 2011,

**NOW THEREFORE**, based on the jury's factual determinations as set forth in its verdict,

**IT IS HEREBY ORDERED** that plaintiff Modern Fence Technologies, Inc. ("Modern Fence") take nothing from defendant Qualipac Home Improvement Corp. ("Qualipac") on its claims against Qualipac for infringement of United States Trademark Registration Nos. 2,917,000 and 3,337,668;

**IT IS FURTHER ORDERED** that United States Trademark Registration No. 2,917,000, which had been previously issued to Modern Fence by the United States Patent and Trademark Office on January 11, 2005, be and hereby is **CANCELLED**, pursuant to 15 U.S.C. § 1119, due to lack of acquired distinctiveness and due to genericness;

**IT IS FURTHER ORDERED** that United States Trademark Registration No. 3,337,668, which had been previously issued to Modern Fence by the United States Patent and Trademark Office on November 20, 2007, be and hereby is **CANCELLED**, pursuant to 15 U.S.C. § 1119, due to lack

of acquired distinctiveness, due to genericness, and due to the intentional submission of false information to the United States Patent and Trademark Office in obtaining such registration;

**IT IS FURTHER ORDERED** that Qualipac's prayer that United States Trademark Registration Nos. 3,342,402 (issued on November 27, 2007) and 3,337,669 (issued on November 20, 2007) be cancelled pursuant to 15 U.S.C. § 1119, be and hereby is **DENIED**;

**IT IS FURTHER ORDERED** that Qualipac take nothing from Modern Fence on Qualipac's counterclaim against Modern Fence for attempted monopolization;

**IT IS FURTHER ORDERED** that this action be and hereby is **DISMISSED**;

**IT IS FURTHER ORDERED** that the Clerk of Court enter judgment accordingly;

**IT IS FURTHER ORDERED** that the Clerk of Court shall certify this order and the judgment emanating therefrom and send the same to the Director of the United States Patent and Trademark Office.

**SO ORDERED** this 11th day of May, 2011, at Milwaukee, Wisconsin.

s/ William E. Callahan, Jr.  
WILLIAM E. CALLAHAN, JR.  
United States Magistrate Judge